that no loss has occurred under the terms of the policy, and quotes the words of Field, J., "As well might he recover insurance money upon a building that he had intentionally fired." [8] The analogy to fire insurance is unfortunate. The nature of life insurance is fundamentally different. In the former the payment is made only as an indemnity and upon the happening of an "accident." In the latter the contract is essentially an investment, a purchase by the insurance company of an annuity upon the life of the insured. The insurer contemplates a loss upon every policy, as is shown by its willingness to advance money upon its own policies as collateral security. The charges for the premiums are based upon exact mortality tables that have not excluded from their calculations death by suicide and murder.[9] Furthermore as a matter of practice it is the almost invariable custom of insurance companies to pay such losses, without contest, unless they have reason to suspect that policy was taken out with a view to the crime. For then the dispute is not as to a loss under a policy but whether a valid policy was ever issued.[10] But when there was no fraud in taking out the policy the fact that under its terms a loss has occurred is well shown by the decisions which allow the representative of the insured to recover on the policy.[11] Such a view met with approval in a recent North Carolina Case. *Anderson* v. *Life Insurance Co. of Va.*, 67 S. E. 53 (N. C.). In such a case the contract right of the insured against the company passes to the former's personal representative free from any equity in the beneficiary. Even those cases which say that, owing to the beneficiary's having had a direct right against the insurance company the representative's recovery must be in quasi-contract, effectually hold that there has been a loss, for the recovery is not the premiums paid but the face of the policy.[12]

TRANSFERS WITHIN THE RULE AGAINST CHAMPERTY AND MAINTENANCE. — Champerty and maintenance are usually found in transactions involving the giving of aid in a law suit. Such a case is *Van Gieson* v. *Magoon*, 20 Haw. 146, in which it was held, however, that an agreement by an attorney to defend a suit for a portion of the property in litigation is not illegal in Hawaii.[1]

The objection of champerty and maintenance is also frequently made to certain transfers of rights in property. Where a chattel is in the possession of an adverse claimant, the owner has nothing to transfer but a right of action or of recaption.[2] The assignment of this right is sometimes

[8] New York Mutual Life Insurance Co. *v.* Armstrong, 117 U. S. 591.

[9] See Lange *v.* Royal Highlanders, 110 N. W. 1110 (Neb.); ALEXANDER, THE LIFE INSURANCE COMPANY; 23 HARV. L. REV. 557.

[10] Prince of Wales, etc., Assn. *v.* Palmer, 25 Beav. 605; Conn. Mutual Life Insurance Co. *v.* Hillmon, 188 U. S. 208 (death, thirteen days after issue of policy); New York Mutual Life Insurance Co. *v.* Armstrong, *supra*, in which were spoken the words of Field, J., *supra*.

[11] Cleaver *v.* Mutual Reserve Fund Assn., *supra*; New York Life Insurance Co. *v.* Davis, *supra*; Supreme Lodge *v.* Menkhausen, 209 Ill. 277; Schonfield *v.* Turner, 75 Tex. 324.

[12] See 14 HARV. L. REV. 375.

[1] For a discussion of the law as to attorney's fees, see 18 HARV. L. REV. 222.

[2] Goodwyn *v.* Lloyd, 8 Port. (Ala.) 237; McGoon *v.* Ankeny, 11 Ill. 558. See 3

said to be champertous.[3] But this is probably just a survival of the old idea that the transfer of any chose in action is champertous,[4] for the transferee is allowed to sue in the name of the transferor to recover the chattel.[5] The assignment of the right to land adversely held was expressly forbidden by an old English statute.[6] This doctrine of maintenance has met with varying fortune in America.[7] In some states the rule is abolished by statute,[8] or is treated as obsolete by the courts; [9] in others it is established by statute [10] or by decisions.[11] In probably a majority of the states in which the rule prevails the grant is said to be void as to the adverse possessor but good against everyone else; [12] and the grantee, after suit in the name of the grantor to oust the adverse possessor, is protected by his deed.[13] This produces substantially the same result as the abolition of the rule. In any case the owner transfers really only a right of entry and there must be a suit or actual entry to oust the adverse possessor; whether this is done in the grantee's own name or in the name of the grantor is of no importance. It is also said rather indefinitely that the purchase of a mere right to sue will not be sustained.[14] And under this doctrine the right to have a conveyance set aside for fraud is commonly not assignable.[15]

Sometimes the ban of champerty or maintenance is urged against transfers of both things in possession and choses in action. For instance, under a New York statute modelled after an old English act it was held that the purchase of property from the owner in possession pending suit concerning it was void.[16] As the old English acts concerning champerty and maintenance are merely declaratory of the common law,[17] the same result might have been reached without that statute. But the cases now seem to hold such a transfer good.[18]

Confused with the preceding principle is the rule prohibiting an at-

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HARV. L. REV. 343. *Contra*, Tome *v.* Dubois, 6 Wall. (U. S.) 548. See The Brig Sarah Ann, 2 Sumn. (U. S.) 206, 211.

[3] McGoon *v.* Ankeny, *supra.*

[4] See 4 BLACKSTONE, COMMENTARIES, 135. Despite the prevalent idea as to the reason for the non-assignability of choses in action, scholars now seem agreed in believing it was not due to a fear of maintenance. See 2 L. QUAR. REV. 495; POLLOCK, CONTRACTS, 3 Am. ed. 278; 3 HARV. L. REV. 339.

[5] Stogdel *v.* Fugate, 2 A. K. Marsh. (Ky.) 136; Boynton *v.* Willard, 10 Pick. (Mass.) 166. And in jurisdictions where the real party in interest is the plaintiff of record, the assignee may sue for the property in his own name. Doering *v.* Kenamore, 86 Mo. 588.

[6] 32 H. 8, c. 9. This was practically repealed by 8 & 9 Vict. c. 106.

[7] See 1 STIMSON, AMER. STAT. LAW, § 1401; DEMBITZ, LAND TITLES, § 60.

[8] MASS. REV. LAWS, [1902] 1222; McLoud *v.* Mackie, 175 Mass. 355.

[9] Campbell *v.* Everts, 47 Tex. 102.

[10] GEN. STAT. CONN., [1902] § 4042; Paton *v.* Robinson, 81 Conn. 547.

[11] Campbell *v.* Point Street Iron Wks., 12 R. I. 452.

[12] McMahan *v.* Bowe, 114 Mass. 140. See Stringfellow *v.* Tenn. Coal, Iron & R.R. Co., 117 Ala. 250.

[13] Key *v.* Snow, 90 Tenn. 663; Coogler *v.* Rogers, 25 Fla. 853.

[14] Hinchman *v.* Kelley, 49 Fed. 492.

[15] Brush *v.* Sweet, 38 Mich. 574; Whitney *v.* Kelley, 94 Cal. 146. But *cf.* Dickinson *v.* Burrell, L. R. 1 Eq. 337.

[16] Jackson *v.* Ketchum, 8 Johns. (N. Y.) 479.

[17] Wallis *v.* Duke of Portland, 3 Ves. 494. See Partridge *v.* Strange, Plowd. 77, 88. But see Schomp *v.* Schenck, 40 N. J. L. 195, 205.

[18] Camp *v.* Forrest, 13 Ala. 114; Frazier *v.* Harris, 51 Ind. 156; O'Driscoll *v.* Doyle, 31 Colo. 193.

torney from purchasing even outright from his client the subject-matter of a suit which the attorney is conducting.[19] Only a right of action was transferred in all the cases found, with possibly one exception,[20] but the language used and in some instances the reasons given apply equally to the transfer of a thing in possession.

From the jumble of cases it is difficult to deduce fixed rules as to what transfers are to-day forbidden. The common-law doctrines have to a large extent become obsolete [21] and ideas of public policy [22] instead of hard and fast rules are employed to determine what transactions are obnoxious.[23] "The present legal doctrine of maintenance is due to an attempt on the part of the Courts to carve out of the old law such remnant as is in consonance with our modern notions of public policy." [24]

WHAT IS COMMERCE. — Much of the difficulty in the interpretation of the interstate commerce clause of the federal Constitution has been due to the uncertainty of the meaning of the word "commerce." The dictionary definition is "an interchange of goods, merchandise, or property of any kind." [1] Yet it has always been clear that the term, as used in the Constitution, was intended to have a broader scope. Marshall, C. J., laid down the much-repeated maxim that "commerce is intercourse." [2] Every contract would be included in this definition, but it is uncontroverted that a mere contract made between citizens of different states is not in itself interstate commerce.[3] Therefore the adoption of this term is of little assistance for the question merely becomes, what intercourse is included.

Prior to the adoption of the Constitution the states imposed different import and export duties, resulting in vexatious regulations and restrictions. Hence in giving Congress power to regulate interstate commerce it would seem clear that the evil sought to be remedied was the interference by a state with the free movement of goods or of individuals. It was early settled that the transportation of individuals into a state is commerce.[4] It is also settled that the transportation of goods from one

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[19] Simpson *v.* Lamb, 7 E. & B. 84; West *v.* Raymond, 21 Ind. 305; Miles *v.* Mut. Reserve Fund Life Ass'n., 108 Wis. 421. Some courts have permitted such a purchase subject to the usual close examination for fraud or unfairness given any transaction between attorney and client. Myers *v.* Luzerne County, 124 Fed. 436. See Dunn *v.* Record, 63 Me. 17, 19. And an attorney may take an assignment of such property as security for services rendered in the suit. Anderson *v.* Radcliffe, E. B. & E. 806. *Cf.* Mott *v.* Harrington, 12 Vt. 199.

[20] Rogers *v.* R. E. Lee Mining Co., 9 Fed. 721.

[21] See Casserleigh *v.* Wood, 14 Colo. App. 265, 270.

[22] It is now recognized that the law against champerty and maintenance is designed to prevent unnecessary litigation and the trafficking in quarrels. See Miles *v.* Mut. Reserve Fund Life Ass'n., *supra*.

[23] See Casserleigh *v.* Wood, *supra*; Fischer *v.* Kamala Naicker, 8 Moo. Ind. App. 170, 187; POLLOCK, CONTRACTS, 3 Am. ed. 460.

[24] Brit. C. & P. Conveyors, Lim. *v.* Lamson Store Service Co., Ld., [1908] 1 K. B. 1006, 1013.

[1] See CENTURY DICTIONARY.

[2] Gibbons *v.* Ogden, 9 Wheat. (U. S.) 189.

[3] Paul *v.* Virginia, 8 Wall. (U. S.) 168.

[4] Gibbons *v.* Ogden, *supra;* Passenger Cases, 7 How. (U. S.) 283.